

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Bivas Pattanayak

C.R.A. 642 of 2008

Subodh Rajbanshi

-Vs-

The State of West Bengal

With

C.R.A. 325 of 2008

Niranjan Das @ Niru Das @ Mahanto

-Vs-

The State of West Bengal

For the Appellant : Mr. Partha Sarathi Bhattacharyya, Adv.
In CRA 642/2008 Ms. Swarnali Saha, Adv.

For the Appellant :
In CRA 325/2008 Ms. Manasi Roy, Adv.

For the State : Mr. Saswata Gopal Mukherjee, Id. P.P.,
Mr. Partha Pratim Das, Adv.
Ms. Amita Gaur, Adv.

Heard on : 12.05.2022.

Judgment on : 12.05.2022

Joymalya Bagchi, J. :-

Appellants have assailed judgment and order dated 28.03.2008 and 29.03.2008 passed by the learned Additional Sessions Judge, Fast Track Court, Balurghat, Dakshin Dinajpur convicting the appellants for

commission of offence punishable under Sections 302 of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for life and to pay a fine of Rs.10,000/- each, in default, to suffer rigorous imprisonment for two years more. With a further direction that 50% of the fine amount, if realised, be handed over to Kausalya Barman (P.W.1), daughter-in-law of the deceased viz., Balai Barman.

Prosecution case as alleged against the appellants is as follows:-

On 23.12.2006 at 3.30 P.M., Balai Barman was sitting and keeping watch over the wheat field in the land of Sujit Tarafder (P.W.6) which he had taken on lease. At that point, Kausalya was standing in front of the house feeding hay to cattle. She saw appellant Subodh Rajbanshi passing down the road with a 'Ramda' in hand which is used for animal sacrifice on religious occasions. He was accompanied by Niranjan Das @ Niru Das @ Mahanto. After sometime, both of them returned and started conversing with Balai. In course of conversation, Niru held the hand of Balai while Subodh struck on the neck of Balai with a 'Ramda'. Balai fell down and died at the spot. Both the miscreants fled away. It is further alleged 4/5 years ago, one Kamal Rajbanshi, a co-accused had seduced Bala Barman, wife of Balai. This enraged Balai and his son. They assaulted Kamal. Consequently, Kamal threatened Balai on various occasions. Appellants are the close friends of Kamal and Kausalya suspected they had committed murder in conspiracy with Kamal Rajbanshi.

Kausalya lodged written complaint which was scribed by P.W.17, a law clerk. On the basis of her written complaint, Kushmani Police Station Case No.155 of 2006 dated 23.12.2006 under Section 302/201/34/120B IPC was registered against the appellants and Kamal Rajbanshi. In course of investigation, appellants were arrested. 'Ramda' was recovered from the house of one Badi Rajbanshi, aunt of the appellant viz., Subodh.

In conclusion of investigation, charge-sheet was filed against the appellants and Kamal Rajbanshi. Charges were framed under Sections 302/34 and Sections 201/34 IPC against the appellants and Kamal Rajbanshi. They pleaded not guilty and claimed to be tried. In course of trial, prosecution examined 20 witnesses and exhibited a number of documents. Defence of the appellants was one of innocence and false implication. In conclusion trial, learned trial Judge by the impugned judgment and order dated 28.03.2008 and 29.03.2008 convicted and sentenced them, as aforesaid. They were, however, acquitted of the charge under Sections 201/34 IPC. Kamal Rajbanshi was acquitted of all the charges levelled against him. Hence, the present appeals.

Mr. Partha Sarathi Bhattacharya, learned Advocate appearing for the appellant Subodh Rajbanshi argues genesis of the prosecution case has been suppressed from the outset. Investigating Officer (P.W.20) admitted that he had received prior telephonic information with regard to the murder which was diarised. However, the GD was

not produced in Court. Investigation commenced pursuant to such information and subsequent statement of P.W.1 is hit by Section 162 of the Code of Criminal Procedure and cannot be treated as FIR. Referring to the evidence of P.W.3, Mr. Bhattacharyya strenuously argues P.W.1 was not an eyewitness but had been informed of the incident by P.W.3. He further contends motive to commit the crime has not been proved as Kamal Rajbanshi, who nursed grudge against the deceased Balai had been acquitted. Recovery of 'Ramda' cannot be connected to appellant Subodh Rajbanshi. Hence, the prosecution case has not been proved beyond doubt. Appellant Subodh Rajbanshi is entitled to an order of acquittal.

Nobody appears on behalf of Niranjn Das @ Niru Das @ Mahanto. Ms. Manasi Roy, empanelled Advocate with the High Court Legal Services Authority is requested to appear on his behalf. Secretary, High Court Legal Services Authority is requested to regularise her appointment.

Ms. Roy adopts the arguments of Mr. Bhattacharyya. In addition, she submits Niranjn Das @ Niru Das @ Mahanto did not assault the deceased. He was unarmed. It cannot be said to have shared common intention with Subodh Rajbanshi to commit the murder. Hence, appellant viz., Niranjn Das @ Niru Das @ Mahanto may be acquitted.

Mr. Partha Pratim Das with Ms. Amita Gaur, learned Advocates for the State submits P.Ws.1 and 3 are eyewitnesses to the incident. Both the witnesses have stated the appellants came to the spot together. Appellant viz., Subodh was armed with a 'Ramda' used for animal sacrifice and appellant viz., Niranjana Das @ Niru Das @ Mahanto was fully aware that the other appellant was armed. In course of conversation, appellant viz., Niranjana Das @ Niru Das @ Mahanto held the hand of the deceased while Subodh struck a fatal blow on his neck. Post mortem doctor (P.W.9) noted incised wound on the neck of the deceased which corroborates the ocular version of eyewitnesses. 'Ramda' was recovered from the house of a relation of the appellant viz. Subodh Rajbanshi. Witnesses present at the Kali temple where animal sacrifice took place stated Subodh was present with the 'Ramda' in the temple immediately prior to the occurrence. Prosecution case is, therefore, fully established and the appeals are liable to be dismissed.

P.W.1, Kausalya Barman is the daughter-in-law of the deceased. She is the first informant. She deposed on the date of incident around 3.30 P.M. Balai was keeping watch on the wheat field of one Sujit Tarafder. She was feeding cows in front of their house. Subodh was returning after attending *panthabali puja* in a nearby Kali temple. He was carrying a 'Ramda' which was used for animal sacrifice. He was accompanied by Niranjana. They proceeded towards Kalipakur. After sometime they returned. Niranjana asked for a '*bidi*' from her father-in-

law. When her father-in-law offered '*bidi*', he held his hand and Subodh gave a blow on his neck with a 'Ramda'. P.W.1 shouted and started running towards the place of occurrence. She saw her father-in-law lying with deep cut injury on the right side of neck. Police came to the spot. Complaint was prepared by one Abdul Aziz on her instruction. She handed over the complaint to police. She made statement before the Magistrate. She also deposed with regard to the enmity between her father-in-law and Kamal Rajbanshi who was a close friend of the appellants.

P.W.3, Basu Barman is the other eyewitness. He deposed he was going towards his field when he saw the appellants talking with Balai. Niru and Balai were exchanging something when Subodh gave a 'Ramda' blow on the neck of Balai. Balai fell down at the spot and died. Kausalya was feeding cows in front of the house about 100/125 cubits away. He told about the incident to Kausalya. Police came to the spot. He made statement before the Magistrate.

During cross-examination, in reply to a specific question whether Kausalya had arrived at the place of occurrence after he requested her, P.W.3 categorically stated Kausalya had also seen the incident and he had asked her to go to the spot promptly.

P.W.2, Ganesh Barman is the Shebait of the temple where Subodh was the 'Balidar' and used to perform animal sacrifice during religious occasions. He stated on the day of the incident Subodh had

performed animal sacrifice in the Kali temple. Subsequently, he heard Subodh and Niranjan had struck Balai in the potato field. He saw Balai lying with bleeding injuries at the place of occurrence. He also made statement before the Magistrate.

P.W.7, Brojendra Nath Das was also present at the time of 'Balidan' on that day. He stated Subodh Rajbanshi was the 'Balidar' in the temple. Subsequently he heard Subodh had murdered Balai.

Other witnesses viz., P.W.4, Protap Singha, P.W.5, Rabindra Nath Das, P.W.10, Bakul Barman and P.W.11, Badal Barman are post occurrence witnesses.

P.W.10 stated he saw the appellants flee away from the spot along with Kamal Rajbanshi. P.Ws.10 and 11 also deposed they had seen the appellants talked with Kamal Rajbanshi prior to the incident.

P.W.4, Protap Singha, P.W.8, Tapan Debnath and P.W.16, Mantu Sarkar deposed regarding recovery of 'Ramda' from the house of one Badi Rajbanshi, aunt of Subodh Rajbanshi.

P.W.9, Dr. Ranjan Kumar Mustafi is the post mortem doctor who made the following notings in his post mortem report:-

"He was of average built. Rigor mortis was present on all the limbs. There was deep sharp cutting injury about 12"x ½" on the right side of the neck extending right side of the arm with a depth of 3.9" involving major great vessels in the neck. Rest of the arms were normal."

He opined death was due to haemorrhage and shock a direct result of above injuries, ante mortem and homicidal in nature.

P.W.20, Santosh Kumar Sarkar is the Investigating Officer of the instant case. He deposed on 23.12.2006 one Sripada Sarkar, the then S.I. of Police had received telephonic information that one Balai Barman had been murdered by Subodh and Niranjan. The body was lying in the potato field of Sujit Tarafder. The information was diarised as GD No.992/06 dated 23.12.2006. He went to the place of occurrence. He found the body with severe cut injury on throat. He received complaint from Kausalya Barman. In course of investigation, he collected blood stained leaves, controlled earth and other articles from the place of occurrence. Photographs of the place of occurrence were taken by P.W.19. He prepared rough sketch map of the place of occurrence. Statement of witnesses was recorded. He held inquest over the dead body and sent the body for post mortem examination. He forwarded witnesses for recording statement under Section 164 of the Code of Criminal Procedure. He recovered 'Ramda' from the residence of Badi Rajbanshi, aunt of Subodh Rajbanshi. He sent seized Ramda and other articles for FSL examination. He submitted charge sheet. After receipt of FSL report, he produced it in court.

Mr. Bhattacharyya argued P.W.1 cannot be treated as an eyewitness. P.W.3 claimed he informed P.W.1 about the incident. Thereafter, she came to the place of occurrence. I am unable to accept

such contention. P.W.3's deposition must be read as a whole. Although he claimed he told P.W.1 about the incident, in cross-examination he clarified the position and stated P.W.1 had also seen the incident and he merely told her to go to the spot. Analysing the evidence of P.W.1, I have no doubt in my mind the said witness had seen the incident. She was feeding cows in front of her house while her father-in-law was keeping watch over a wheat field which he had taken on lease from Sujit Tarafder (P.W.6). From the sketch map prepared by I.O. as well as the deposition of P.W.3, it appears P.W.1 was at a distance of 100/125 cubits. The place is an open field and she could clearly see the incident of assault on her father-in-law. P.W.3 who was proceeding to his field also saw the incident. He noted the presence of P.W.1 in front of her house. He rushed towards her and told her to go to the spot where her father-in-law was lying with bleeding injury.

In view of the aforesaid analysis, I do not find any contradiction in the versions of P.Ws. 1 and 3 which would improbabilise P.W.1 as an eyewitness.

Mr. Bhattacharyya submitted written complaint lodged by P.W.1 cannot be treated as FIR. A telephonic information with regard to murder of Balai Barman was received at police station which was diarised as GD No.992/06. Pursuant to the general diary, Investigating Officer (P.W.20) proceeded to the spot and commenced investigation. He seized blood stained leaves, control earth under a seizure list with

reference to the said general diary. Investigation had already commenced when written complaint was received from P.W.1. Such complaint was hit by Section 162 of the Code of Criminal Procedure and could not be treated as first information report. It is true P.W.20 had proceeded to the spot to work out the aforesaid telephonic intimation about murder of Balai Barman and commenced investigation thereupon. But as the telephonic information received at the police station was at the behest of an unknown person, it appears the investigating agency chose to treat the written complaint received from P.W.1 as first information report. Conduct of the investigating agency appears to be prudent and does not affect the truthfulness of the prosecution case as the earlier telephonic information received at the police station also implicates the appellants as the persons who murdered Balai Barman.

Hence, failure to treat the general diary as first information report at its height is an irregularity in investigation which does not go to the root of the prosecution case. Even if the complaint lodged by P.W.1 is not treated as FIR, there is nothing on record to improbabilise her as an eyewitness to the incident. On the other hand, evidence of the eyewitnesses P.Ws.1 and 3 is substantially corroborated by post mortem doctor who found severe incised wound on the neck of the deceased. Other witnesses also deposed regarding the presence of Subodh Rajbanshi with 'Ramda' at the Kali temple on the fateful day

where he performed 'Balidan' immediately prior to the incident. Subsequently, 'Ramda' was recovered from the residence of the aunt of Subodh and FSL report, marked as Exhibit 15 shows presence of blood on the 'Ramda'.

It has also been argued as Kamal Rajbanshi has been acquitted, motive to commit crime has not been proved. Evidence on record show Kamal Rajbanshi had eloped with the wife of the deceased. He had threatened the deceased on various occasions. However, trial court acquitted Kamal Rajbanshi since the court was of the view deposition of P.Ws.10 and 11 that Kamal was seen talking with the appellants prior to the incident is not corroborated by other witnesses. Presence of Kamal at the place of occurrence was not noted in the First Information Report or by P.W.3. Hence, the said accused was given the benefit of doubt. Acquittal of Kamal Rajbanshi, however, does not affect the involvement of the appellants who were present at the place of occurrence and took active part in the murder.

It is argued Niranjana Das did not share common intention to murder. Though he was present at the place of occurrence, he was unarmed and did not assault the deceased.

I am unable to accept such argument on behalf of the said appellant viz. Niranjana Das.

Both the appellants came to the place of occurrence together. They jointly proceeded from the place of occurrence and thereafter

returned. Niranjan started a conversation with the deceased in order to distract him and held his hand. At that juncture Subodh struck on his neck with a 'Ramda'. Subodh was carrying a 'Ramda' which was within the knowledge of Niranjan.

These circumstances emanating from the evidence on record clearly establish the fact that the appellants shared the common intention to murder Balai and pursuant to such common intention Subodh had struck on his neck with a 'Ramda' resulting in his death.

In the light of the aforesaid discussion, conviction and sentence of the appellants are upheld.

Appeals are accordingly, dismissed.

From the report submitted on behalf of the State it appears appellant viz. Subodh Rajbanshi is on parole. His parole is forthwith cancelled. He is forthwith directed to surrender before the trial Court and serve out the remainder of his sentence. If he fails to do so, the trial court shall issue appropriate processes for his apprehension and execution of sentence in accordance with law.

Niranjan Das @ Niru Das @ Mahanto is on bail. His bail bond stands cancelled and he is directed to surrender forthwith before the trial court and serve out the remainder of the sentence failing which the trial court shall take appropriate steps for his apprehension and execution of sentence in accordance with law.

Period of detention suffered by the appellants during investigation, enquiry and trial shall be set off against the substantive sentences imposed upon them in terms of Section 428 of the Code of Criminal Procedure.

Let a copy of this judgment along with the lower court records be forthwith sent down to the trial court at once.

Photostat certified copy of this judgment, if applied for, shall be made available to the appellants upon completion of all formalities.

I agree.

(Bivas Pattanayak, J.)

(Joymalya Bagchi, J.)

as/akd/cm/PA